



September 21, 2001

Ms. Mary Barrow Nichols
Senior Vice President and General Counsel
The Texas Workers' Compensation Insurance Fund
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR2001-4246

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152251.

The Texas Workers' Compensation Insurance Fund (the "Fund") received a request for information concerning aggregate workers' compensation utilization data, including the HCPCS and CPT codes, and for each code, the total number of times that services were paid under that code and the total aggregate dollar amount paid for each code for the year 2000. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 2(b) of article 5.76-3 of the Texas Insurance Code and section 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, including information that is made confidential by statute. You raise section 2(b) of article 5.76-3 of the Insurance Code. That provision states that the Fund may "refuse to release information relating to claims, rates, the [F]und's underwriting guidelines, and other information that would give advantage to competitors or bidders." You explain that the Fund competes in the insurance market and assert that the requested data relate to claims. You state:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[The requested aggregate dollar amounts paid for each HCPCS and CPT code and the total number of times services were paid under each code] . . . would reveal our average pricing of services through negotiation, the severity of our claims, and our utilization review abilities. Any data related to the frequency of different types of services demonstrates the types of treatments our claimants receive. Competitors could use the frequency data to derive the severity of our claims, which has a direct correlation to our financials in determining necessary pricing. . . . Any payment data by service code could be analyzed to reveal the individual payment rates we negotiated with individual providers for individual services and/or the "fair and reasonable rate" we have established for an individual service. . . . Both of these elements set our service and pricing structure as compared to our competitors.

We agree that the requested utilization data "relat[e] to claims, rates, the [F]und's underwriting guidelines, and other information that would give advantage to competitors or bidders." Therefore, pursuant to section 552.101 of the Government Code in conjunction with section 2(b) of article 5.76-3 of the Insurance Code, the Fund must withhold the requested information.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

²Because section 552.101 is dispositive, we need not address your section 552.104 exception.

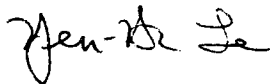
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref.: ID# 152251

Enc.: Submitted documents

cc: Mr. Harold Freeman
Associate Director of Legislative Affairs
Texas Medical Association
401 West 15th Street
Austin, Texas 78701-1680
(w/o enclosures)